LOCAL GOVERNMENT ELECTIONS LEGISLATION

A DISCUSSION PAPER

Province of British Columbia

Ministry of Municipal Affairs,
Recreation and Housing
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Minister

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A MESSAGE FROM THE MINISTER

I welcome this opportunity to present *Local Government Elections Legislation: A Discussion Paper.*

This document demonstrates my ministry's commitment to wide consultation in reviewing and updating local government elections legislation.

Our goal is to bring local government elections into the 1990s — by ensuring that the legislation enables those elections to be more fair, honest, open and accessible to participation by all British Columbians.

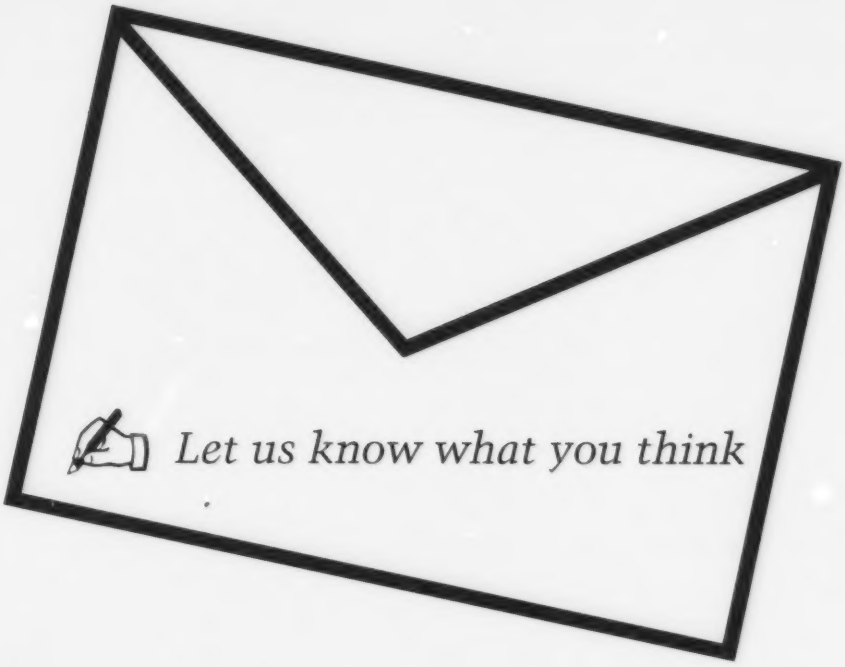
The initial development of this discussion paper has involved the insight and efforts of people like you, who are directly involved in, or affected by, local government elections.

I look forward to continued participation from all interested British Columbians, and I particularly encourage your comments and suggestions on the issues and the proposed changes put forward in this discussion paper.

Together we can make changes that will simplify and clarify local government elections legislation to make it easier for all British Columbians to be involved in the election process.

Thank you for taking part in this initiative.

Robin Blencoe
Minister of Municipal Affairs,
Recreation and Housing



Please send **by November 30, 1992** your comments, suggestions, and ideas to:

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A comment sheet is provided on the last page, for your convenience.

EXECUTIVE SUMMARY

Local Government Elections: A Discussion Paper is about changing the legislation on local government elections — to bring local government elections into the 1990s.

Local government officials, staff, and members of the public have all asked for changes to the local government elections legislation, found in Parts 2 and 3 of the *Municipal Act*.

We want to make sure that local government elections are open, honest, and fair; balance provincial standards with local flexibility; and respect electors' right and ability to choose their own representatives. Above all, we want to make local government elections more accessible — to all people.

We hope to have the needed improvements in place for the next general local government elections — in 1993.

Purpose of Discussion Paper

This discussion paper plays an important role in those changes, and provides an opportunity to:

- **outline proposals for changes** that will revise, clarify, and add to Parts 2 and 3 of the *Municipal Act*;
- **flag the options** for other changes;
- **discuss some important campaign issues for the 1990s**, for which we have not developed specific proposals; and
- **get your comments and ideas** on all the issues and proposed changes.

It is important to remember that this is a discussion paper; we hope that the proposed changes will improve the current elections legislation, but remember... the proposals are **not** final.

Proposals

Some of the most significant of the **proposals** are:

- lowering the voting age to 18 years;
- requiring that all electors on voting day be residents of the jurisdiction (i.e. municipality) in which they are voting;
- emphasizing the principle of "one person, one vote";
- preserving voting day registration, and letting local governments decide whether they also need advance registration;
- removing requirements for electors to give their occupation when registering or voting;
- establishing a system for voting by mail;

- requiring all areas to have advance voting opportunities;
- clarifying that ballots marked with tick marks (✔) will not be rejected;
- enabling electors to challenge elector and candidate qualifications;
- removing some of the arbitrary candidate disqualifications, such as disqualifying persons who have a "disputed account" with the municipality;
- limiting candidates' presence at the voting place, but enabling them to appoint representatives to be present;
- enabling electors, candidates, candidate representatives, or elections officials to apply for a judicial recount;
- clarifying how electors may challenge an election

We also want to know what you think the **options** are for:

- "wards," or "neighbourhood constituencies";
- sharing the cost of local government elections;
- a candidate's affiliation with an elector organization appearing on the ballot;
- resolving an election that is still tied after a judicial recount.

Important Campaign Issues for the 1990s

In local government elections, do you think we should address:

- campaign contributions and expenditures;
- campaign advertising;
- conflict of interest?

If so, how?

Let us know what you think. With your comments, suggestions and insights, we can create legislation that will enable local government elections to be more fair, honest, open and accessible — for all British Columbians.

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INTRODUCTION TO CHANGE

PART **1**

PURPOSE

This paper is about changing the legislation on local government elections — it's about bringing those elections into the 1990s.

By **"local government elections"** we mean elections for...

- ✔ mayor
- ✔ councillors
- ✔ regional district electoral area directors
- ✔ school board trustees
- ✔ Islands Trust trustees

By **"local government elections legislation,"** we generally mean the rules and procedures currently found in Parts 2 and 3 of the *Municipal Act*. A few local government elections have some of their own special rules in other Acts — such as the *School Act*. At the moment, changes are not proposed for those special rules — but they will be affected by any changes to the *Municipal Act*.

This paper has **four** main purposes:

- **to outline proposals for changes** that will revise, clarify, and add to Parts 2 and 3 of the *Municipal Act*;
- **to flag options** available for making changes on some issues — such as "wards" ("neighbourhood constituencies") — and to get feedback on those options;
- **to open for discussion important campaign issues for the 1990s** — such as campaign contributions and expenditures, and campaign advertising — for which we have not yet developed proposals for change;
- **to get your comments and ideas** on all the issues and proposed changes discussed in this paper.

Throughout the paper, you will be asked to...

Let us know what you think

on various questions and issues. It is important to remember that this is a discussion paper; while we hope that the proposals for change will improve the current elections legislation, remember... the proposals are not final.

The ministry hopes to have improved elections legislation ready for the 1993 local government elections. To meet that goal, your comments and suggestions are needed in the fall of this year, to help us in developing legislation that will enable local government elections to be more fair, honest, open and accessible.

NEED FOR CHANGE

Why is the ministry proposing changes to the legislation on local government elections?

Put simply, we can make local government elections legislation more fair, open, honest and accessible.

Parts 2 and 3 of the *Municipal Act* are unnecessarily complex, unclear, and in many instances, out of date — not surprising, since the roots of many of the current provisions can be found in the **1957** *Municipal Act*.

Some examples of changes needed:

- giving people with disabilities a real opportunity to vote;
- giving all electors the opportunity to vote on advance voting days if they need to;
- letting local governments use technology to increase the efficiency of elections by, for example, automated vote counting;
- allowing for special elector registrations, to increase the number of registered electors.

It is time for a comprehensive review of the legislation, to bring local government elections into the 1990s.

Let us know what you think.

- What are the most important changes that **you** would make to local government elections legislation?

CONSULTATIONS

Who has the ministry talked to so far?

We have consulted with people representing many different interests, including...

- ✓ Union of British Columbia Municipalities (**UBCM**);
- ✓ Municipal Officers Association (**MOA**);
- ✓ British Columbia School Trustees Association (**BCSTA**);
- ✓ British Columbia School District Secretary Treasurers Association (**BCSDSTA**);
- ✓ Municipal Law Section of the Canadian Bar Association;
- ✓ Elections British Columbia.

We also received many letters from citizens — with comments and suggested improvements to local elections.

Most of the issues raised in this discussion paper were first discussed in earlier papers on local government elections:

Towards New Elections Legislation for Local Government (1991) — the ministry and UBCM worked closely together on this first elections policy paper and workshop for the 1991 UBCM Convention;

Local Elections Legislation Technical Review (1991) — the ministry discussed how to fix problems with the more technical aspects of how to run an election.

Many of the comments, suggestions and ideas which came out of these papers have now been incorporated in the legislative proposals in this discussion paper.

Let us know what you think

- Have all the important issues been covered?
- Have the right choices been made?
- Will the proposed changes improve the elections process?

We need your comments, suggestions and ideas on the proposals for changes and the other issues discussed in this paper. This discussion paper gives all who are interested — particularly members of the public — an opportunity to think about proposed changes to local government elections legislation **before** final legislation is written.

GUIDING PRINCIPLES

How did the ministry develop the proposed changes in this discussion paper?

In addition to talking with and listening to interested groups and individuals, we have based the proposed rewrite of local government elections legislation on certain principles. These principles are fundamental to **all** elections in a democratic society, and are important to creating just and effective local government elections legislation.

accessibility	✓	all electors should be able to take part the elections process should be efficient elections legislation should be clear and understandable
openness	✓	elections should be conducted in the public eye rules and procedures should be clear to all
honesty	✓	secrecy of the ballot is vital the integrity of elections should be protected from abuse
fairness	✓	rules of due process and natural justice should apply "one person, one vote" rules and procedures should apply equally to all
balance	✓	the needs of public and local governments should be considered

		the different roles of local government and the province should be defined
flexibility	✓	consistency with provincial and federal elections rules is needed, but should not override the unique needs and circumstances of local government
respect	✓	voters have the right and ability to choose their representatives

IMPORTANT CAMPAIGN ISSUES FOR THE 1990s

The public expects more from elected officials in the 1990s — a higher standard of conduct and more care in their actions. The public also expects elections to be fair, honest and open. As a result, issues that were traditionally only of concern for provincial and federal elections, may now also be important for local government elections.

We have identified 3 of those issues:

- **campaign contributions and expenditures**;
- **campaign advertising**; and
- **conflict of interest.**

It is important to remember that these issues are important for provincial and federal elections — how the federal and provincial governments address these issues for their elections could affect how these issues are addressed for local government elections.

Let us know what you think.

- Are there any other important campaign issues that should be addressed?
- Would legislation on these issues ensure that elected officials meet the public's higher expectations?

CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Campaign contributions and expenditures in local government elections are currently unregulated. The issue is **should they be regulated?**

Expenditures in a campaign can include...

- ✓ candidate's personal expenses
- ✓ direct costs, such as office rent, advertising, printing
- ✓ indirect costs, such renting cars, polling

Contributions to a campaign can include...

- ✓ money
- ✓ "in kind" services
- ✓ volunteer services
- ✓ favourable advertising by "third parties"

Some other provinces — such as Ontario and Quebec — do regulate campaign contributions and expenditures. How they regulate varies, but includes limiting the total cost of a campaign; limiting the total amount that any one person may contribute to a campaign; requiring that each candidate declare contributions over a certain amount.

Let us know what you think.

- Should the total amount of campaign contributions be limited?
- Should candidates be required to disclose contributions over a certain amount?
- Should the total amount spent on a campaign be limited?
- Should the same rules apply to **all** local governments, regardless of size?

CAMPAIGN ADVERTISING

Campaign advertising in local government elections is currently regulated only in a limited way.

Campaign advertising can include...

- ✓ signs
- ✓ flyers
- ✓ billboards
- ✓ newspaper advertisements

The ministry is proposing to keep the current rule that no person may advertise at a voting place on voting day. The issue is **should there be more restrictions?**

Let us know what you think.

- Should the total amount of campaign advertising be limited?
- Should advertising only be permitted for a limited period of time during the campaign?
- Should different types of advertising be regulated differently?
- Should advertisements not be permitted at all in certain places?

CONFLICT OF INTEREST

Conflict of interest is usually an issue once a candidate has been elected and holds office. Conflict of interest can arise, for example, where an elected official who owns property that under rezoning would be available for a valuable development, votes on the rezoning application.

For MLAs, the province recently strengthened the *Members' Conflict of Interest Act*. The province is currently reviewing the issue of conflict of interest generally, including the question of who provincial rules should cover — only MLAs or also local government elected officials?

But what about candidates?

Under the current legislation for local government elections, some persons are assumed to be potentially more likely to develop conflicts of interest — such as those who have contracts with the local government. These people are not allowed to run for election; electors are not given the opportunity to choose whether or not to vote for these people — even though, if these people were elected, they might never **actually** get into a conflict of interest while in office.

As you will read, the ministry is proposing to eliminate those broad disqualifications for some, such as persons who have a contract with the local government. For others who are currently disqualified from running for office, the ministry is proposing more flexibility — municipal employees, for example, could be given a leave of absence to run for office and if elected, they would be required to resign their employment.

The issue is **do we still need another way of "screening" candidates for a potential for conflict of interest?**

Currently, candidates must make some **financial disclosure**. Some have suggested that stricter financial disclosure might be appropriate. Stricter or full financial disclosure could involve candidates publicly declaring their, and their family's, financial interests — such as property they own or shares that they hold.

The issue then is **should candidates be required to make full financial disclosure?**

Let us know what you think.

- Should financial disclosure requirements be applied to candidates, to allow electors to judge whether the candidate is likely to develop conflicts of interest?
- On the other hand, should conflict of interest be dealt with when it actually arises, e.g., `` once a candidate is elected to local government?
- If some financial disclosure is required, what kind?

PROPOSALS FOR CHANGE

PART 2

INTRODUCTION

This section details the recommendations for the new legislation. It deals with the entire election process from who can vote to how a count is to be conducted.

Because some readers may not be interested in all of the proposals, we have divided the proposals into four broad subject areas: general matters; electors; candidates; and the election process. It is hoped that by doing this, readers can quickly identify the issues that they are interested in.

You may find the following definitions useful in reading the proposals for the new legislation.

General Local Election	The regularly held election for all elected offices of local government. Elections for school board trustees are held at the same time.
triennial elections	Elections held every three years.
local government	In this paper, local government refers to municipalities and regional districts. Where local government is to include school boards, it is noted.
Regular Voting Day	The general voting day for the election. For General Local Elections, it is the third Saturday in November. For by-elections and other votes, this day is established by the local government.
election proceedings	The nomination period, voting and/or count proceedings.
returning officer (R.O.)	The chief administrator of the election.
presiding officer	The election official responsible for a voting place, usually the returning officer or the deputy returning officer (D.R.O.) of a voting place.
acclamation (acclaimed)	Occurs when a candidate assumes office without an election by voting, because no one else has been nominated for the position.
indictable offence	For the purposes of this discussion paper, this means an offence committed under the Criminal Code of Canada.
controverted election	The overturning or cancelling of an election.
court	For the purposes of this paper, court refers to the Provincial **and** Supreme Courts of British Columbia
neighbourhood constituencies	An electoral unit within a municipality similar to a ward.

GENERAL MATTERS

WHEN ELECTIONS ARE HELD

Triennial elections

Since 1990, General Local Elections are held every three years. The move to triennial elections was largely an effort to increase voter turn out and was made in response to requests urging that local government elections in B.C. follow the well-established norm across Canada.

Regular voting day

Regular Voting Day is the third Saturday in November. Saturday has proven to be an effective day for holding general elections as many electors do not have to work on Saturdays.

Voting hours

Voting on Regular Voting Day is from 8 A.M. to 8 P.M. This should allow people who have to work on Regular Voting Day the opportunity to vote.

No change proposed

There is no proposal to change when elections are held, as they are already designed to encourage maximum participation of electors.

ARRANGING FOR ELECTIONS

PROPOSAL

- **Local governments will be responsible for appointing the returning officer and an alternate R.O.**
- **The R.O. will be responsible for making administrative decisions concerning elections.**
- **Where councils or boards are to make decisions concerning the election, they must pass a bylaw on the matter not less than eight weeks before the beginning of the nomination period.**

Responsibility for arranging elections

Municipal councils and regional boards arrange elections. They are responsible for appointing the returning officer and election staff, assigning voting places, determining when advance voting will be held, etc.

Depending on the type of school district, arrangements for school board trustee elections are made by the school board and/or municipal council conducting the election. Ideally, incumbent council or board members would not be permitted to make decisions that could affect, or be perceived to affect, their chances of re-election. All decisions relating to the election would be made by independent, impartial bodies.

Alternatives

Federal and provincial governments have made efforts to remove elected officials from most election-related decisions by establishing relatively autonomous bodies such as Elections B.C. and Elections Canada.

At a local level, some provinces have also tried to avoid electoral conflict of interest by having either the province or an independent "local electoral commission" oversee the local electoral process. The role of these impartial bodies ranges from providing information and advice, to training returning officers, to having the Chief Electoral Officer of the province administer local elections.

However, all such efforts to remove elected officials from election decisions have costs in dollars, bureaucracy, local autonomy, and accountability. Additionally, there is little evidence to suggest that local officials have used their authority in the arrangement of election procedures to influence their chances of re-election; it appears that the problem may be one of perception.

New approach: distancing members' involvement

Rather than totally eliminate council or board members' involvement in the electoral process, we have tried to draw a line between those matters which should be decided by council and those which should be decided by the R.O. In the areas where council involvement is necessary, we have imposed certain time constraints for council/board action to remove any perception of members tampering with their chances at re-election.

New roles for local governments and R.O.s in election administration

Under the new proposals, councils/boards will be responsible for appointing the returning officer and an alternate R.O. to act in the absence of the returning officer. The R.O. will be responsible for hiring staff, designating voting places, placing notices of election proceedings and generally overseeing the election process.

Council board involvement will be limited to those issues which involve accountability, e.g., decisions which involve the expenditure of a great deal of funds — such as the use of automated voting/counting machines — and issues requiring flexibility to reflect local conditions — such as additional advance voting opportunities, use of advance registration, etc. All of these matters will be dealt with by bylaws which must be passed not less than eight weeks before the nomination period begins.

A number of other "elections arrangement issues" are still under review. These include establishing neighbourhood constituencies and the cost-sharing of jointly held elections. Each of these issues will be discussed in turn.

NEIGHBOURHOOD CONSTITUENCIES

A system of neighbourhood constituencies permits a municipality to be divided into smaller components (neighbourhoods), each with roughly the same number of electors. Each neighbourhood elects its own representative/s to council. The mayor is elected at large by the electorate of the entire municipality.

Current provisions

In B.C., municipal councils can establish neighbourhood constituencies by bylaw, with the approval of the Lieutenant Governor in Council.

Alternative approaches

Most other jurisdictions in Canada make provision for neighbourhood constituencies, but use many different systems. In some jurisdictions, council is responsible for establishing neighbourhood constituencies. In others, council has this authority only with approval of the provincial government or the electorate.

In some provinces, the responsibility for establishing neighbourhood constituencies lies with the provincial government. This is usually done through legislation which details the framework. e.g., stipulates each neighbourhood constituency must be relatively equal in size (+/- 10%), that boundaries and population must be reviewed every six years, etc.

Let us know what you think.

Who should make the decision to move towards a system of neighbourhood constituencies - the municipal council, the electorate, the province, or some combination of these?

- Should the legislation provide the framework for establishing neighbourhood consistencies or should council be able to decide such matters?
- Should the council be able to request that the provincial government establish a system of neighbourhood consistencies?
- Should neighbourhood constituencies be compulsory for large municipalities?
- Should all initiatives to establish neighbourhood constituencies require the approval of the electors?

COSTS OF LOCAL GOVERNMENT ELECTIONS

Current situation

Currently, the Act makes no provisions concerning the costs or cost- sharing of local government elections. In spite of this, many jurisdictions cooperate in running elections. The new provisions will recognize this cooperation and will endorse cost-sharing arrangements reached between local governments.

Costs of school board elections

Municipalities are required under the *School Act* to conduct elections for municipal school districts. This is efficient as the General Local Elections for

school boards are held at the same time, and largely under the same rules, as municipal elections. However, even when the municipal council is acclaimed, the council is still responsible for conducting the school board election. As there are no provisions in the *School Act* for the sharing of costs, municipal councils must pay the costs for holding school board elections unless a voluntary cost-sharing arrangement has been agreed to. Cost-sharing arrangements vary throughout the province.

Options

Clearly, joint elections can be more efficient. The question is, who should pay and how much? The options include: maintaining the status quo; having school boards pay the incremental costs; or having school boards pay half of the total costs of the election.

Let us know what you think.

- What do you think is the fairest way of sharing the costs for jointly held elections?

SPECIAL PROVISIONS FOR EMERGENCIES

PROPOSAL

- **The presiding officer may adjourn an election proceeding where the health and safety of persons is at risk, or where the integrity of the proceeding is at risk.**
- **The R.O. may make an application to the minister to have a time period specified in the Act extended.**

Need for new provisions

Special provisions are needed to cover situations that can't be anticipated and which could delay or prevent an election proceeding from taking place. The current legislation only makes such provisions in cases of "riot and violence." It is proposed that the new legislation have broader provisions to cover a wide range of "emergency" situations.

New proposal: hours of operation to be maintained

The proposed legislation allows the presiding officer to adjourn an election proceeding (e.g., nominations, voting, etc.) if the health and safety of persons is at risk, or if the integrity of the proceeding is at risk. Proceedings can be adjourned temporarily to another time or place. When a proceeding is adjourned, it must be recommenced and the total time prescribed for that event must be observed; e.g., if regular voting is adjourned, the recommenced voting must ensure that voting was open for a total of 12 hours.

ELECTORS:

WHO CAN VOTE

PROPOSAL

In order to vote, a person — on the day of registration and on the day the person votes — must be:

- **a Canadian citizen;**
- **18 years of age;**
- **resident of the jurisdiction; and**
- **resident of the province for at least six months.**

Principles of entitlement

Two fundamental principles underlying the democratic electoral process are: only "citizens" of a community should be entitled to participate in selecting the community's political representatives; and one person, one vote. Citizens of a community are usually residents.

In most modern democratic societies, the right to vote is defined in terms of citizenship, not as a right accorded by property ownership. We believe that this principle should be extended to local government elections.

Need for change

Currently, the *Municipal Act* defines the citizenship of a community extremely broadly - to the extent that non-residents of the community, including certain kinds of corporations, are entitled to vote. The Act also permits certain persons to vote more than once. For instance, an agent of a corporation is able to vote once on behalf of the corporation, and once as an elector (assuming the agent is entitled to vote as an elector). Clearly, the elector entitlement provisions of the Act need to be revised to reflect current standards.

Only residents to vote

It is proposed that only citizens of a community should be able to vote in local government elections. This means that only residents, who also meet the other elector eligibility requirements, will be able to vote; non-resident property owners, non-resident tenants in occupation, and corporations will not be able to vote in local government elections.

Voting age 18

The other significant change to the eligibility requirements is the reduction of the voting age to 18. As 18-year-olds are entitled to vote in federal and provincial elections, the right to vote at local government elections should also be extended to these young men and women.

Residency rules

In order to vote, a person must be a resident of B.C. for at least six months, a resident of the jurisdiction on the day the person registers, and must continue to be resident on the day the person votes. For the purpose of voting in local government elections, residency is determined by certain rules. These rules help to ensure that only the citizens of a community are able to vote.

A person's residence is the place where the person has established his/her home and to which, when absent, the person intends to return. Under the

residency rules, a person may only have one residence, and that residence is lost once the person establishes another residence. Also, the new rules will be determined so that persons who do not have a fixed address, but do reside in a community, may vote.

New rules for students and others

The new residency rules will also allow students and persons having temporary places of employment away from their usual residence, the right to choose their residence. Again, these persons, as with all other electors, may only register and vote in one place.

WHO MAY NOT VOTE

PROPOSAL

The following persons are disqualified from voting:

- **persons who are incarcerated because they committed an indictable offence which is punishable by life imprisonment, and who are serving at least a 10 year sentence;**
- **for six years following their conviction, persons who have committed serious election offences under the *Municipal Act*;**
- **persons who have been disqualified from voting by law.**

Disenfranchisement of certain persons

The *Municipal Act* currently disenfranchises all persons convicted of indictable offences, unless the person has obtained a free or unconditional pardon or has served the sentence imposed. This provision denies the right to vote to persons who are on probation for such an offence.

Need for change

Recent court cases involving the disfranchisement of those convicted of indictable offences have determined that under the *Charter of Rights and Freedoms*, this disqualification is too broad. The federal government and several provincial governments have extended, or are planning to extend, the right to vote to prisoners, only disqualifying those who have been convicted of the most serious indictable offences.

At present there is no principled relationship between violation of the law and the disqualification from voting in the *Municipal Act*. Under the current provisions, a person could tamper with a ballot box and still be able to vote, while another person could be convicted of "breaking and entering" and be denied the right to vote.

New elector disqualifications

It is proposed that those who have shown a blatant disregard for civic rights or the democratic process be disqualified from voting. Persons who have been found guilty of indictable offences, punishable by life imprisonment and who are serving at least a 10 year term, will be disqualified from voting while they are serving their term of incarceration.

The Act will also disqualify persons who have been disqualified from voting by any law; therefore, if a person commits an offence under the provincial *Elections Act* or other election laws in the country, and is disqualified from voting for a period of time, the disqualification will also apply to local government elections.

Additionally, persons who have committed serious election offences — that is corrupt practices — will be disqualified from voting for six years following their conviction. For a discussion of corrupt practices, see "Election Offences and Penalties," in the section on Election Proceedings.

Residency rules for prisoners

The new residency rules will provide that the residence of prisoners is to be their last place of residency prior to incarceration.

REGISTRATION

PROPOSAL

- **Local governments will determine whether registration at the time a person votes is the most practical for their community, or whether advance registration (i.e., list of electors) is necessary or desirable.**
- **For those communities using advance registration, the methods of developing a list of registered electors will be streamlined and made more efficient, administratively and in terms of cost.**
- **Electors will no longer be required to give their occupation when registering.**

Need for registration

In order to vote, a person must be registered as an elector. Registering to vote involves completing an application form that contains a declaration of eligibility. This declaration is to be witnessed and signed. This is to ensure that only eligible persons vote.

Current provisions

Currently, the Act provides that local governments must have a list of electors (i.e., registration in advance of the election), but also allows for registration at the time of voting. Many local governments have advocated the use of voting day registration (all persons registering on the day they vote) over the use of list of electors, as they find the current system frustrating and inefficient.

New approach

Neither system of electors registration is inherently more secure or efficient. The reasons for using one system over another are largely dependent on local conditions, e.g., the size of jurisdiction, the number of electors, public understanding of jurisdictional boundaries, etc.

Under the new provisions, local governments will be able to determine which elector registration system is most appropriate for their community. No matter which system is chosen, electors will have the ability to register at the voting place. The ministry will provide guidelines to assist local governments in making the most appropriate choice.

Improvements to preparation of list of electors

Many changes are proposed to the way the list of registered electors is compiled to try to make the process more efficient and less costly. For instance, the need to hold a formal "Court of Revision" has been eliminated; instead there will be a revision period during which the list may be corrected and names added or subtracted.

During the revision period, the list of registered electors will be posted so that electors may inspect the list. If an elector feels that an ineligible person's name is on the list, the elector may make a written objection to the R.O. The R.O. is to follow up on all objections. If an R.O. is unable to locate the person whose qualification has been challenged and the elector making the objection is not able to provide the R.O. with satisfactory evidence, the person's name will remain on the list.

Future improvements

Under the new proposals, local governments may continue to use the most cost efficient means of up-dating elector registration information by using the provincial voters' list. The ministry has discussed with Elections B.C. the possibility of harmonizing provincial and local governments' lists. While local governments already have access to the provincial voters' list, using this list is sometimes difficult, as the electoral boundaries are not always the same.

It is expected that advancements in technology and the proposed implementation of a (GIS) Geographical Information System at Elections B.C., will soon make possible a single elector registration data base. All lists of electors could be developed from this single pool of up-to-date elector registration information. It is hoped that a GIS system will be implemented within the next five to seven years.

ACCESSIBILITY TO VOTING

Improved access to voting

A number of new provisions have been developed to make voting more accessible to electors. Through these new provisions, all electors of a community will have the opportunity to vote in local government elections.

VOTING BY MAIL

PROPOSAL

- **A mail voting system, based on the provincial government's "three envelope system," will be established.**

Mail ballots offered

For electors who are unable to attend a voting place, either because they are absent from the jurisdiction on days when voting is held, or because they are physically unable to attend any voting opportunity, a mail ballot system has been developed.

Three envelope system

The system of voting by mail at local elections is similar to the "three envelope system" used at provincial elections. Electors will be able to vote by mail by contacting the jurisdiction in person, by mail or by phone, and requesting a mail ballot be sent to them. This request must be made at least seven days before Regular Voting Day.

The three envelope system involves:

- an inner secrecy envelope which is not removed until the ballot is to be counted;
- a certificate envelope on which is printed a declaration to be filled out by the elector, attesting that the person has not already voted and will not vote again; and
- an outer envelope on which is printed the address where the ballot is to be sent.

Proven to be effective at the provincial level, the three envelope system maintains the secrecy of the ballot, while also providing the necessary security measures.

Elector responsibility

It is the elector's responsibility to ensure that the mail ballot and its contents are received by the R.O. before the close of voting on Regular Voting Day; if the ballot is received late, or if the ballot certificate envelope is not properly filled out, the ballot will remain in the secrecy envelope and will not to be counted. These unopened mail ballots are to be destroyed with the other election materials once all election proceedings are finished, and when the deadline to challenge an election is past.

ADVANCE VOTING

PROPOSAL

- **All jurisdictions are to have "advance voting" on the Wednesday, ten days before Regular Voting Day, and on at least one other chosen by the local government.**
- **The hours of mandatory advance voting are 8 A.M. to 8 P.M.**
- **Local governments may change the hours by passing a bylaw at least eight weeks before the beginning of the nomination period.**
- **Local governments may hold additional advance voting.**

Mandatory advance voting

For those electors who will be absent from the jurisdiction on Regular Voting Day, who have a physical disability, or who for reasons of conscience will not be able to vote on this day, additional opportunities to vote will be provided through mandatory advance voting.

Local flexibility: additional advance voting

All jurisdictions in the province will be required to hold advance voting on the Wednesday, ten days before Regular Voting Day and on at least one other day specified by local government bylaw. The legislation will provide, generally, that the hours of the mandatory advance voting be from 8 A.M. to 8 P.M. Local governments will have the option of setting the hours of mandatory advance voting to suit the needs of the community, as, for example, a 12 hour voting opportunity may be unnecessary in a small community. Local governments may also provide other advance voting opportunities in addition to the mandatory days, to increase elector participation.

SPECIAL VOTING OPPORTUNITIES

PROPOSAL

Local governments may hold special voting opportunities to allow:

- **additional voting to be held on Regular Voting Day at places such as shopping malls; and**
- **special voting opportunities to be held on other days at places such as hospitals and remote work sites.**

New flexible rules for special voting opportunities

Local governments will also be able to provide for "special voting opportunities," to be held on Regular Voting Day. Special voting opportunities are based on the existing "mobile poll" provisions; they provide for voting to be held at a number of different locations for specified periods of time. The proposals establish two types of special voting opportunities.

'Mobile' voting on voting days

- Special voting opportunities held on Regular Voting Day or advance voting days. These special voting opportunities do not have to operate on the same hours as Regular Voting Day (8 A.M. to 8 P.M.). Local governments will be able to set the voting hours for these additional opportunities, allowing voting at facilities such as shopping malls which may, for example, only be open from 9 A.M. to 5 P.M.

Special voting opportunities held in institutions, etc.

- Special voting opportunities held on other days to allow electors to vote who would otherwise be unable to; e.g., electors in hospitals and/or at remote work sites. For these special voting opportunities, local governments may specify special eligibility requirements in order to restrict voting to the targeted group of electors; e.g., patients at a hospital but not visitors.

ACCESSIBLE VOTING PLACES TO THOSE WITH PHYSICAL DISABILITIES OR MOBILITY IMPAIRMENTS

PROPOSAL

- As far as reasonably possible, voting places must be easily accessible to persons who have a physical disability or whose mobility is impaired.

New requirement

Local governments will be required to provide accessible voting places for people with physical disabilities or mobility impairments. If there are no such buildings, special procedures will be followed to allow such electors to vote.

CURBSIDE VOTING FOR THOSE WITH PHYSICAL DIFFICULTIES

PROPOSAL

- Curbside voting will be available to electors who are able to get near, but are unable to gain entrance to, the voting place.

Voting for those unable to enter a voting place

If an elector is not able to enter a voting place due to physical or mobility impairment, but is able to get near the voting place, i.e., in the parking lot, the elector may send word to the presiding officer at the voting place that he/she would like to vote by curbside voting.

Procedure for curbside voting

Once notified, the presiding officer is to have an election staff member take a mail ballot outside to the elector. When the ballot has been completed by the elector, the election staff member is to take the mail ballot, sealed in the proper envelopes, to the presiding officer. The mail ballot is to be placed in a ballot box with the other mail ballots and is to be counted at the final count.

MARKING BALLOTS

PROPOSAL

- **Electors will continue to be instructed to mark their ballots with a cross (X); however, ballots marked with a tick mark (✔) will be accepted.**
- **Electors who are unable to mark their own ballot, through inability to read or physical impairment, will be able to have either an election official, a friend or a relative assist them in ballot marking.**

Need for consistency

Currently, the Act provides that electors mark their ballots with an X, but the rules governing the acceptance or rejection of ballots do not specify that an X is the only acceptable mark. This has led to confusion and inconsistency from jurisdiction to jurisdiction, with some local governments accepting other marks — such as "tick marks" (✔) — in addition to Xs, while others do not.

Universal mark (X)

There are several reasons for providing that electors use a "universal" mark such as an X in indicating their choice on a ballot. A universal mark is essential to ensure secrecy of the ballot (i.e., protect elector's identity), that ballots are treated impartially, and that the counting of ballots is quick and efficient.

Marking ballots

Provincial legislation stipulates that ballots are to be marked with an X. To be consistent with the provincial legislation, the new local government provisions will also stipulate that the electors are to mark their ballots with an X. However, the rules for the acceptance and rejection of ballots will stipulate that if a ballot is marked with a "tick mark,"(✔) and is not otherwise objectionable, the ballot is to be accepted.

Electors requiring assistance

Some electors have difficulty marking their ballots, either through visual impairment, inability to read, etc. Under the new proposals electors will be able to have a friend, relative, or an election official assist in ballot marking. Candidates and their agents are not allowed to act in this capacity.

Declaration

Persons who assist (other than election officials) must make a solemn declaration that they will mark the ballot as directed, and that they will not reveal how the elector voted.

ELECTOR PARTICIPATION IN LOCAL GOVERNMENT ELECTIONS

PROPOSAL

Electors are to be given a more active role in the election process by:

- **giving them more freedom to choose their representatives;**
- **allowing them to challenge elector and candidate qualifications; and**
- **continuing to provide for elector challenges to overturn elections and remove disqualified members from office.**

More active role for electors

Under the new proposals, electors will have a more active role in election proceedings. The new legislation will respect electors' ability to choose representatives who reflect their interests, therefore, a number of disqualifications that limited elector choice, will be eliminated. For further discussion of the elimination of disqualifications, please see the discussion in "Who Can Run for Office," under the section on Candidates.

Besides the traditional role of choosing their political representatives, electors will have an opportunity to play a fundamental role in safeguarding the integrity of the election process. The legislation will provide electors with new opportunities to ensure that there are checks and balances in the election process.

Elector challenges

The election process is largely based on trust. There is no fool proof method of ensuring that only qualified persons take part in the election process; to try to do so would be expensive and would place a heavy burden of proof on all electors. Presently, safeguards are provided by deterrents; there are stiff penalties for offenders. Under the new provisions, additional safeguards will be provided by allowing electors to challenge candidate and elector qualifications.

Challenges of candidate qualifications

In the case of candidates, an elector may, up to 48 hours after the close of nominations, make an application to a court to determine a candidate's qualifications. The person making the application must also give the nominee and R.O. notice of the application and the time of the court's hearing of the matter. There are also time restrictions imposed on the court to ensure that the matter is quickly resolved.

Challenges to elector eligibility

Electors may challenge the eligibility of another elector at the time of voting, or — if the jurisdiction is using advance registration — the elector may make a formal objection to an unqualified person on the list. For challenges made at the time of voting, the person being challenged must either produce evidence establishing his/her eligibility to vote, or must take an additional declaration attesting that he/she is eligible to vote.

Challenging an election

Electors will continue to be able to challenge an election if they believe that the election was not held in accordance with the law and/or that a member was unlawfully elected. Elector participation in the challenge of an election is discussed further in the section on Election Proceedings, under "Controverted Elections."

Removal from office

Additionally, electors can have a member of council/board removed from office if the member has become disqualified since his/her election. Four electors may make an application to a court, on affidavit, alleging that a member is disqualified. If the court finds the member is disqualified, the court will declare the member's position vacant. Given the need for the speedy resolution of such matters, time limits on when the application must be made and on when the court must reach a determination, will be specified in the legislation.

CANDIDATES

WHO CAN RUN FOR OFFICE

PROPOSAL

In order to run for local government office a person must meet the basic eligibility requirements to vote. That is, a person must:

- be a Canadian Citizen;
- be 18 years old;
- be a resident of the province for at least six months;
- not be disqualified from voting under any law; and
- not be incarcerated for conviction of an indictable offence punishable by a maximum of life imprisonment and serving a sentence ten years or more.

Current qualifications

The current provisions allow persons who do not live in the community to run for office. They only require that a person running for office be an elector anywhere in the province.

Suggested change

It has been suggested that persons seeking local office should be required to live in the jurisdiction in which they are seeking election. However, the jurisdictional boundaries often do not reflect the "social" boundaries of a community; in many communities it is difficult to tell where one community ends and other begins. A person may not live in an area, but nevertheless be prominent and have significant interest in the community.

Problems

Additionally, requiring persons to be from the jurisdiction seriously restricts one of the fundamental principles of the electoral process: allowing electors maximum choice of their political representatives. Therefore we are not proposing to change the current residency requirements for candidates.

WHO MAY NOT RUN FOR OFFICE

PROPOSAL

The following persons are not able to run for office:

- judges of the peace (including a judge of a provincial or supreme court);
- employees or salaried officers of the local government [illegible] municipality of a regional district, or a regional district in which that person works or is employed unless the employee or salaried officer has received a leave of absence to run for office.

Minimum restrictions

Again, restrictions for candidates should be kept to a minimum; it is the electors of a community who should decide who will best represent their interests. Ideally, the legislation would not contain any restrictions on who can run for office. However, there are some situations where the electors may not have the opportunity to choose, e.g., where candidates are acclaimed or appointed to office.

It is for these situations that restrictions to protect the interests of electors from candidates who are "unsuitable" for public office — either because of a conflict of interest or because the person is judged to be incapable of carrying out public office — are needed. However, the need to protect electors must be balanced against the respect for electors' ability to choose their representatives.

Therefore, it is proposed that most of the current disqualifications in the *Municipal Act*, such as having a disputed account or an interest in a contract with the local government or being an undischarged bankrupt, be removed. Only the following persons will be disqualified from holding office:

Disqualification of justices of the peace

Justices of the peace also include supreme and provincial court judges. The reason for continuing to disqualify judges is that those who make laws should not be involved in adjudicating laws they created.

Disqualification of salaried officers and employees

Employees and salaried officers are disqualified as they would be in an almost constant conflict of interest situation. However, it seems unreasonable to deny employees the opportunity to run for and hold office.

Leave of absence for employees and salaried officers

It is therefore proposed that employees and salaried officers be able to run for office if they obtain a leave of absence during the election period and resign from their employment if elected. The election period begins either when the employee makes the application for a leave of absence, or when the nomination period begins — which ever is longer — and ends when the results of the election are finally determined. A local government must grant the employee the leave of absence for at least this minimum time period.

Disqualification of R.D. and municipal members' employees

Additionally, persons who work for a regional district will not be able to hold office in a member municipality, and an employee of a municipality can not hold office in the municipality's regional district. If these persons wish to run for office, they must obtain a leave as described above.

NOMINATION PROCESS

PROPOSAL

- **There be a nomination period for the receiving of nomination documents.**
- **Nominations close one week earlier than currently, to provide an extra week for the election proceedings.**
- **Candidates are to be nominated by two qualified electors from the jurisdiction in which the candidate is seeking election.**
- **Electors be able to challenge candidate qualifications.**

Nomination period

The election process officially begins with the call for nominations for local government office. Under the new provisions, nominations will be received at the local government offices by the returning officer between Monday, the 47th day before Regular Voting Day and Monday, the 33rd day before Regular Voting Day. Nomination documents are received during regular working hours. This will provide a nomination period of roughly 10 working days.

Procedures and requirements for filing nominations

The new nomination provisions will clearly set out the procedures and requirements for filing a nomination. To be a candidate, a person must be nominated by two qualified electors from the community in which the person is seeking nomination. The person must file the required nomination documents with the returning officer, this includes a written and signed acceptance of the nomination, a solemn declaration that the person is eligible to be a candidate, and a written disclosure required by the *Financial Disclosure Act*.

Delivery of nomination documents

The legislation will clearly address how nomination documents may be delivered to the R.O. It is proposed that in addition to the traditional means (e.g., by hand delivery, mail or other delivery service), that facsimile transmissions be accepted, if the original document is also received by the R.O. by the Friday after the close of nominations (nominations close on Monday).

Candidate's responsibility to file a bona fide nomination

Additionally, the returning officer will no longer be involved in "policing" candidates' qualifications. It is the candidate's responsibility to file bona fide nomination documents and to ensure that the returning officer receives the documents within the specified time frames.

Challenge of candidate qualifications

There should, however, be a procedure to allow electors to challenge a nominee's qualifications to run for office, if the person believes that the nominee is not qualified. This mechanism is discussed in the Elector section under "Elector Participation."

WITHDRAWING A NOMINATION

PROPOSAL

- Candidates may withdraw up to the following Monday (a week following the close of nominations);
- After the deadline for withdrawals has passed, candidates may still withdraw by making an application to the minister.

Need for new provisions

Currently, the Act only allows a candidate to withdraw from the election up to 24 hours after the close of nominations. This has caused problems where candidates wish to withdraw from the election due to illness, etc. As the Act does not make any provisions for such cases, candidates have had to advertise their decision to the public.

New flexibility proposed

The need to provide flexibility in allowing candidates to withdraw from the election must be balanced against the need to have a definite cut-off date so that accurate ballots can be printed in time for Regular Voting Day and advance voting. It is proposed that candidates be able to withdraw from the election by delivering a signed withdrawal to the returning officer at any time up until the last day for determining a challenge — the Monday 26 days before Regular Voting Day. Candidates who wish to withdraw after this deadline will be able to make an application to the minister for special permission to withdraw. The minister may allow the withdrawal and may make provisions as to how the election is to be conducted.

DEATH OF A CANDIDATE

PROPOSAL

- When a candidate dies or becomes incapacitated during the campaign, the R.O. must immediately notify the minister.
- The minister may make instructions as to whether, and under what conditions, the election may continue, or the minister may order that new election proceedings be held.

Need for greater flexibility

If a candidate dies before Regular Voting Day, the current provisions provide that the election must be cancelled and new election proceedings begun. Automatically terminating the election is not always necessary. Depending on the circumstances, the death of a candidate may or may not potentially

affect the outcome of the election. For instance, if there are a large number of candidates and if the death occurs before any voting is held, beginning new election proceedings may be unnecessary. Additionally, the Act does not address situations where a candidate becomes incapacitated and is unable to withdraw from the election.

New approach: ministerial action

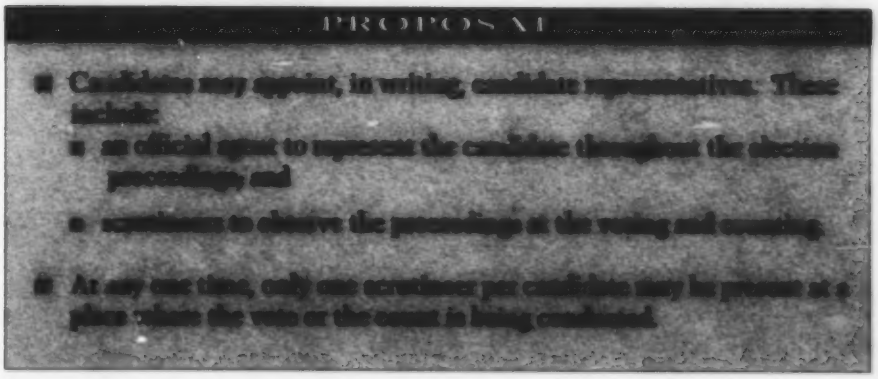
The new provisions will grant the minister authority to decide whether, and under what conditions, the election may proceed if a candidate dies or becomes incapacitated. Trying to detail all the circumstances and solutions would result in lengthy and complex legislation to address a problem that rarely occurs; provisions for ministerial action result in maximum flexibility and simpler legislation.

PRESENCE OF CANDIDATES AT VOTING PLACES

Neutrality of voting places

There has been concern that the presence of candidates at the voting place is inappropriate. The voting place should be neutral, with nothing that could influence the way in which an elector votes. In response to complaints that the very presence of candidates at the voting place constitutes such an influence, it is proposed that candidates be prohibited from being at or near a voting place during voting hours — except to vote.

CANDIDATE REPRESENTATIVES



Need for representatives

As candidates are not able to be at a voting place, it is important that they be entitled to have a representative at the vote, to ensure that the procedures of the Act and any election bylaws are being followed, and to protect the

candidates' interests. Additionally, as candidates may not be able to be present at all election proceedings, the candidate should have one person to act as their official representative.

Official agent and scrutineers

Under this proposal, candidates are able to appoint an official agent. The agent acts on behalf of the candidate throughout the election process. Additionally, candidates (or their agents) are able to appoint scrutineers to represent the candidate by observing the conduct of the vote and the count. The only restriction on who may be appointed as a candidate's representative is that he or she can not be a member of the election staff.

Limits on scrutineers

Unless a local government adopts a bylaw specifying otherwise, only one scrutineer per candidate may be present at a voting place at any one time. Additionally, scrutineers may not be entitled to be present at some special voting opportunities, e.g., those held in long term care facilities. The presence of scrutineers at these special voting opportunities depends on the arrangements made with the facilities' administrators.

ELECTION PROCEEDINGS

NOTICE REQUIREMENTS

PROPOSAL

- **Notice of an election proceeding must appear in a newspaper circulating in the community at least six days, but not more than 30 days, before the proceeding.**
- **In addition to the basic information about the election proceeding (i.e, where, when, etc.), notice must include how electors can obtain additional information.**
- **Notices can be combined (i.e., notices of different proceedings and notices from different communities).**
- **If there is no newspaper circulating in the jurisdiction, alternative means of giving notice are permitted.**

Need for flexibility

It is essential that electors be given adequate notice of an election proceeding. The new provisions will require that notice be given of all election proceedings, e.g., the call for nominations, **all** voting opportunities, etc. Given that jurisdictions have different circumstances, the notice provisions in the Act can not impose too rigid notice provisions. Therefore, while insisting that proper notice be given, the new provisions will offer local governments flexibility in how notice is given.

New provisions

Local governments will have to give notice of an election proceeding in a newspaper circulating in the jurisdiction, at least six days but not more than 30 days, before the event. This is the basic requirement; if there are no newspapers circulating in the community (or that will be circulating within the time specified) then alternative notice provisions will have to be followed. Local governments may also provide additional notice, e.g., T.V. and/or radio.

Cost efficiencies of combining notice

In efforts to allow local governments to achieve some cost efficiencies, the new provisions will provide that notice provisions can be combined. Notice of several different election proceedings (i.e., notice for advance voting and voting on Regular Voting Day), and notices for several communities, can be combined.

DECLARATION OF ELECTION

PROPOSAL

- After the nominations have closed, and the times for challenges to candidate qualifications and withdrawing have expired, the R.O. will declare whether the election will be held by voting or by acclamation of candidates to office.
- If there are more candidates than positions, there will be an election by voting. The R.O. then issues a notice of election to inform electors of the date, times and location of voting on Regular Voting Day.
- If there are not enough candidates to declare an election by voting, the candidates nominated are to be declared elected by acclamation.
- If there are not enough council members to fill the vacant positions, the council members acclaimed to office may appoint qualified persons; if the council fails to act, the minister may make the appointments.
- If there is no representation for an electoral area, the regional board must make an additional attempt to elect an electoral area director; if after this additional attempt, no person steps forward to be the electoral area director, the board may appoint a qualified person.
- Persons appointed to council or a regional board have all the rights, powers and duties of an elected member.

Different rules for municipalities and regional districts

The procedure when there are insufficient candidates for an electoral area director on a regional district board varies from the procedure to be followed for municipal councils. The reason is because the electorate in a municipal election has the opportunity to elect several people to act as their representatives; there will be someone on council that was chosen by the electorate. Only one director is elected for an electoral area; there is no one else on the board that truly represents the area. Therefore, the board must provide the electorate with an additional opportunity to select a representative of their own choice, before the board appoints a director to be the electorate's representative.

BALLOTS

PROPOSAL

- Candidates' names are normally to be arranged alphabetically by surname.
- Candidates' names may be arranged according to lot, if the local government passes a bylaw at least eight weeks before the beginning of the nomination period.
- A ballot must not contain:
  - any indication that a candidate has held an elected office in the past;
  - a candidates' occupation; or
  - any indiction of a title, honour, degree or decoration received or held by a candidate.

Principles for ballot forms

Rules governing what can and can not be placed on ballots are to ensure that electors are able to identify candidates easily, and ballots are neutral — that is, nothing on the ballot should give, or be perceived to give, any one candidate an advantage over another. Currently, the provisions governing what can and can not be on a ballot do not meet these principles.

Ordering of names on ballots

Many new initiatives have been developed to increase the neutrality of the ballots. Currently, the Act prescribes only one option for the ordering of names on the ballot; they must be arranged alphabetically by surname. Some people feel that this gives candidates with surnames beginning with letters at the beginning of the alphabet an advantage. There is no empirical evidence to support this belief. However, given that some people perceive that alphabetical ordering gives some candidates an unfair advantage, it is felt that other neutral methods of organizing names on ballots should be offered.

It is proposed that names on ballots will continue to be arranged alphabetically, unless otherwise specified by bylaw. A local government may, by bylaw, specify that candidates' names are to be arranged according to lot. The R.O. is to conduct the lot, the procedures of which will be specified in the legislation.

Occupation on ballots

Including a candidate's occupation on the ballot paper is perceived by some to influence electors' choice. The original purpose for including occupation was to help identify candidates whose names were the same or similar. However, there are more neutral methods of identification, e.g., including middle names, partial addresses, etc. The occupation of a candidate will no longer be specified on the ballot.

Elector organization

There are no provisions regarding whether or not elector organization or political party affiliation should be printed on ballots. There has been much debate as to whether it is appropriate to include such affiliations on local government ballots.

Let us know what you think.

- Should elector organization affiliation be allowed to be on the ballot?
- Who should decide if affiliation is to be placed on ballots? Should it be left up to individual candidates, or should councils/boards be able to determine this?

COUNTING OF BALLOTS

PROPOSAL

- **Candidates or their agents and/or one scrutineer may be present at the count. The R.O. also has the authority to allow other persons to be present.**
- **Ballots for local government offices must be counted on election night; the counting of other ballots, (e.g., referendums), can be delayed.**
- **Ballots from other voting (e.g., advance, mail or special voting) are to counted separately on election night, unless less than 25 persons voted, in which case the ballots are to be added to and counted with the ballots from Regular Voting Day.**
- **If the R.O. decides that a recount of all or some of the ballots is needed, the R.O. is to give notice of the time and place of the recount to the candidates or their agents. The provisions for the counting of the ballots also apply to the R.O.'s recount.**
- **All ballots must be counted by the Wednesday following Regular Voting Day when the official proclamation of the election results is made.**
- **Tie votes result in an automatic judicial recount.**

When ballots are to be counted

The returning officer is to oversee the counting of the vote. The count begins after the close of voting on Regular Voting Day. The R.O. has the authority to delay the counting of ballots other than those for local government office, e.g., referendum votes. However, the counting of **all** votes must be completed by the Wednesday following Regular Voting Day.

Rules for acceptance/rejection of ballots

Ballots are accepted or rejected according to rules set out in the Act. The current rules have caused some difficulties as they do not specify what is an acceptable mark. The new rules will provide that acceptable ballots are to be

marked with a cross (X) or a "tick mark" (✓). Ballots with any other marks are to be rejected. Ballots that are marked for more candidates than offices are also to be rejected, as are ballots which contain any handwriting or any other identifiable marks.

Official proclamation of results

One of the most common complaints made by returning officers about the counting procedures is the uncertainty as to when official proclamation of the results may be made. It is proposed that the R.O. may announce, on election night, the unofficial results, but the final proclamation does not have to be made until the Wednesday following the election. This will give the R.O. the opportunity to re-examine the ballot accounts and, if necessary, recount all or some of the ballots prior to making the official declaration.

Ballots from other voting: special rules

The ballots from advance voting, mail voting and special voting opportunities are to be counted during the counting of the Regular Voting Day ballots. These ballots are to be counted separately and a separate ballot account kept. In most instances, this does not cause any problems; however, in smaller communities, the separate counting and accounting of these ballots often results in the violation of the secrecy of the ballot, e.g., if only 11 electors vote and they all vote for the same candidate. It is proposed, that if less than 25 electors vote by mail voting, at advance voting, or at a special voting opportunity, the ballots are to be added to the Regular Voting Day ballots.

Tie votes

The Act now provides that if there is a tie vote, the R.O. must cast the deciding vote. This causes several difficulties. Having the R.O. break the tie sometimes results in double voting as the R.O. may be a resident of the community and have already voted. Also, as the R.O. is often a staff member of the local government, having to decide the outcome of the election places the R.O. in an untenable position. It is proposed that in the cases of a tie vote, there will be an automatic judicial recount.

While judicial recounts usually resolve who has been elected, there are some rare circumstances where the judicial recounts also result in tie votes. Presently, the Act stipulates that the matter is again to be decided by the returning officer - resulting in a third possible vote for the R.O.!

There are a number of options for resolving this issue:

- the R.O. could conduct a lot so that the member is selected by chance;
- in the case of a municipality, a run-off vote among council members could be held to determine the winning candidate;
- a run-off election could be held so that the electors may choose which candidate they wish to have as their representative.

All of these choices have costs: in accountability, dollars, fairness and time. However, any of these choices is preferable to the current situation of having the R.O. cast the deciding ballot.

Let us know what you think.

- How should a tie vote after a judicial recount be resolved?
- Should the winner be selected by chance, by council or by the electorate?

JUDICIAL RECOUNTS

PROPOSAL

- **Application for a judicial recount may be made by a candidate, their representative, an elector or an election official.**
- **An application must be made within four days of the official proclamation of the election.**
- **Notice of the recount is to be given to all candidates affected, and the returning officer.**
- **Recount applications are to be accompanied by an affidavit stating how the count was improperly conducted.**
- **Costs of a recount are to be made at the discretion of the judge. If the judge considers that the recount was in the public's interest (e.g., in the cases of deciding a tie vote), the court may order that the local government pay the costs of the recount.**

Current rules for a judicial recount

Under the current provisions, a count may be judicially considered if:

- the difference of the votes between the losing candidate and the candidate elected is less than 50 votes **and**
- an affidavit alleging the improper counting of the vote is filed.

Need for new rules

This rule fails to take into account several important factors. A fifty vote spread may be a large difference in a small community, but in a community the size of Surrey, it is extremely small. More importantly, it is questionable whether the number of votes should be a deciding factor in determining whether a judicial recount is warranted. The number of votes between the winner and loser bears little significance if it can be shown that the count was not properly conducted.

Under the new proposals, an application for a judicial recount may be made on an affidavit stating the count was improperly conducted; that is, either the tally of results was done incorrectly or ballots were improperly accepted or rejected.

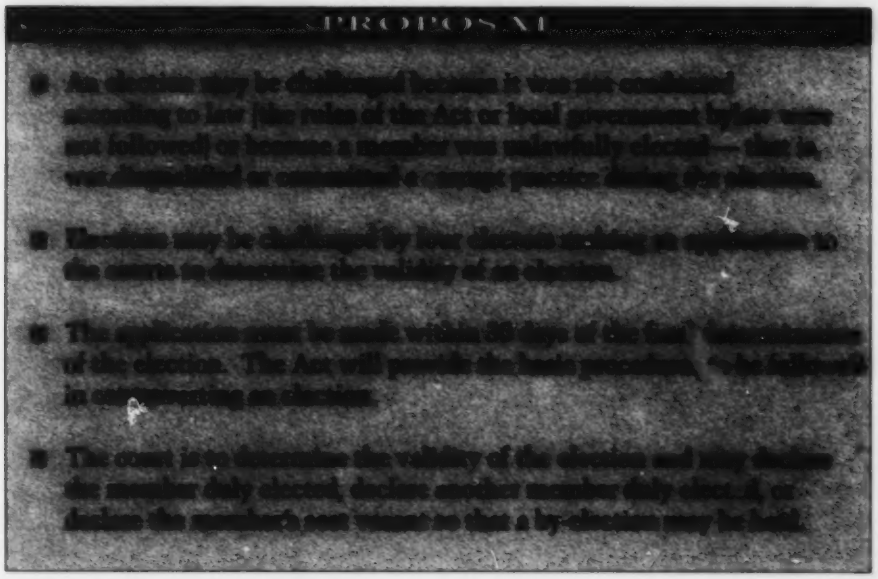
Authority of court

Under these proposals the court has the ability to turn down any application for a recount, if the judge considers that the alleged discrepancy in counting would not have materially affected the outcome of the election. The court also has the discretion to decide whether all or just some (i.e., only the disputed ballots) of the ballots are to be examined in a judicial recount.

Time restrictions

As the inaugural meeting for council is the first Monday in December — and the inaugural meeting for regional board is shortly thereafter — there is a relatively short period of time in which to determine the outcome of the election. Given the need to have judicial recounts conducted in a timely manner, it is proposed that there be time restrictions respecting applications and the courts' consideration of recounts.

CONTROVERTED ELECTIONS



Overturning an election

If an elector believes that an election was not conducted according to law or that a member was unlawful elected, that elector may make an application to a court to have the election overturned. Such an application is to be accompanied by affidavits.

Time restrictions

Under the new proposal, the application must be made within 30 days of the final determination of the election. Currently, the time line is 10 days. Again, given the necessity to resolve such matters quickly, time restrictions as to when the applications must be made, and the time in which the court must determine the matter, are necessary.

Fines for those found unlawfully elected

If the court finds that the member in question was unlawfully elected (was disqualified at the time of election or committed a corrupt practice), the court may order that the person pay a fine not exceeding $5,000, to the local government.

Member's status pending court decision

A member whose election is challenged under these provisions may continue to sit on the council/board until the court has finally determined the member's status. However, a member can voluntarily relinquish his/her seat; this does not terminate any court proceedings under way.

ELECTIONS TO FILL VACANCIES

PROPOSAL

- **The time lines for holding by-elections will be expanded.**
- **Election proceedings for by-elections are to be held under the same rules and on the same time lines as for General Local Elections.**
- **Positions on municipal councils vacated after January 1 of the last year of a term of office may remain vacant until the General Local Election held in November.**

Restrictive time lines

If a vacancy occurs on a council or board, the local government fills the vacancy through a by-election. The current legislation requires that the by-election be held within 45 days from when the local government first received knowledge of the vacancy. This time line has proven to be too restrictive, as it is difficult to arrange to hold an election in such a short period.

New time lines

Under the new proposal, election proceedings to fill vacancies will be held according to the same rules and on the same time frame as those stipulated for General Local Elections, e.g., mandatory advance voting will be held nine days before Regular Voting Day, the nomination period will begin 40 days before Regular Voting Day, etc. Additionally, the time lines for holding the election will be expanded. A local council or board will have 72 days to conduct the election from its first knowledge of the vacancy.

Vacancies in last year of term

The current legislation permits vacancies after July 1 of the last year of the member's term of office, to remain unfilled until the General Local Election held in November. This requirement was established before the implementation of triennial elections and will be readjusted. The proposed new deadline for councils to hold by-elections is January 1 of the last year of the member's term. If a vacancy occurs after this date, the council will not be obliged to fill the vacancy; the position may remain unfilled until the next General Local Election.

Different rules for neighbourhood constituencies and regional districts

The July 1 deadline will still apply to municipalities, where there are neighbourhood constituencies, and to regional districts. In these cases, an 11 month period without representation is unacceptable, as the member from the electoral area or the neighbourhood constituency is the only elected representative of that area.

OFFENCES AND PENALTIES

PROPOSAL

- The ministry proposes to rationalize the most serious "election offences" into five "corrupt practices" offences.
- The general penalty in the *Offence Act* should be the main penalty for election offences.

Election offences

Election offences are those which involve either the substance or the process of local government elections. At the moment, there are approximately 22 different election offences, various specific penalties, and four general penalties. These offences are unclassified and often overlap; the penalties for them are out-of-date and often arbitrary.

Corrupt practices

Corrupt practices are the most serious of election offences; a person who commits a corrupt practice is trying to subvert the election process in order to manipulate the final results of the election. To make it clear which election offences are the most serious, and to make sure that those offences are treated seriously, the proposed change is to create the following five "corrupt practices":

- vote buying;
- undue influence;
- false registration;
- voting knowing not entitled;
- misusing ballot papers and ballot boxes.

Modernizing penalties

To bring the penalties for election offences into line with other penalties in the province, a person convicted of an election offence would be subject to the penalty under the *Offence Act* — currently a fine of not more that $2000 or imprisonment of not more than six months — or both. In addition, a person convicted of a corrupt practice would be disqualified from voting and running for election, or holding office in any local government, for six years following the conviction.